

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ECI SOFTWARE SOLUTIONS, INC.,

Plaintiff,

v.

**JOHN PLYLER PLUMBING AND
HARDWARE, INC.; OLSHAN LUMBER
COMPANY; PROSPERITY COMPUTER
SOLUTIONS, LLC; GREG MATATALL;
WADE FRAZIER; AND ED BALDRIDGE,**

Defendants.

CASE NO. 3:18-cv-02758-S

**DEFENDANT PROSPERITY COMPUTER SOLUTIONS, LLC'S
ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Prosperity Computer Solutions, LLC ("Defendant") and answers Plaintiff's First Amended Complaint as follows:

The following paragraph numbers correspond to the numbers in Plaintiff's First Amended Complaint:

I. SUMMARY

1. Defendant admits that Advantage Business Computer Systems, Ltd. ("ABC")'s products were designed, developed, marketed, and licensed to customers in the lumber, building materials, hardline industries; Greg Matatall ("Matatall") wrote the software program known as "Advantage;" Matatall worked for ECI Software Solutions, Inc. ("Plaintiff"); Plaintiff terminated Matatall in 2015; Ed Baldridge ("Baldridge") worked for Plaintiff and now works for Defendant. Defendant denies the remaining allegations contained in Paragraph 1.

2. Defendant admits that John Plyler Plumbing and Hardware, Inc. (“Plyler”) and Olshan Lumber Company (“Olshan”) were customers of ABC; Plyler and Olshan used Advantage software; Plyler and Olshan now use Defendant’s software. Defendant lacks knowledge or information about Plaintiff’s business relationship with Olshan and Plyler sufficient to form a belief about the truth of the allegations contained in Paragraph 2. Defendant denies the remaining allegations in Paragraph 2.

3. Defendant admits that it reset the Advantage software’s expiration date on Olshan’s and Plyler’s servers. Defendant denies the remaining allegations contained in Paragraph 3.

4. Defendant admits that the Court in this case entered an agreed preliminary injunction. Defendant denies the remaining allegations in Paragraph 4.

II. PARTIES

5. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 5.

6. Defendant admits that Plyler is based in Arkansas. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 6.

7. Defendant admits that Olshan is based in Texas. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 7.

8. Defendant admits that it is a Texas limited liability company that is headquartered in Texas, performs services in Texas and contracts with Texas parties. Defendant admits that it has been served in this case. Defendant denies the remaining allegations in Paragraph 8.

9. Defendant admits that Matatall is a resident of Texas. Defendant lacks sufficient knowledge or information to form a belief about the truth of allegations in Paragraph 9.

10. Defendant admits that Wade Frazier (“Frazier”) is a resident of Texas. Defendant denies the remaining allegations in Paragraph 10.

11. Defendant admits that Baldridge is a resident of Texas. Defendant denies the remaining allegations in Paragraph 11.

III. JURISDICTION AND VENUE

12. Paragraph 12 contains statements of law to which no response is required. Defendant admits the remaining allegations in Paragraph 12.

13. Paragraph 13 contains statements of law to which no response is required. Defendant denies the remaining allegations in Paragraph 13.

IV. FACTUAL BACKGROUND

14. Defendant admits that ABC marketed products under the brand name “Advantage,” which were designed, developed and licenses to businesses in in the lumber and building materials, and hardline industries. Defendant lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph 14.

15. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 15.

16. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 16.

17. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 17.

18. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 18.

19. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 19.

20. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 20.

21. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 21.

22. Defendant admits that it entered into a settlement agreement with ECI in 2016. Defendant lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in Paragraph 22.

23. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 23.

24. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 24.

25. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 25.

26. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 26.

27. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 27.

28. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 28.

29. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 29.

30. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 30.

31. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 31.

32. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 32.

33. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 33.

34. Defendant admits that Advantage software runs on a Linux operating system. Defendant denies the remaining allegations in Paragraph 34.

35. Defendant admits the following facts in Paragraph 35: Defendant is ECI's competitor; Matatall developed Advantage software and owned ABC; for a period of time, ECI operated out of a building owned by Matatall. Defendant denies the remaining allegations in Paragraph 35.

36. Defendant admits the following facts in Paragraph 36: Frazier is Matatall's son-in-law; Frazier worked for ABC; Frazier worked for ECI until 2012; Frazier resigned from ECI in 2012 and proceeded to operate a gym until 2015. Defendant denies the remaining allegations in Paragraph 36.

37. Defendant admits the following allegations in Paragraph 37: ECI terminated Matatall's employment in 2015; Matatall was ABC's founder. Defendant denies the remaining allegations in Paragraph 37.

38. Defendant admits the following allegations in Paragraph 38: on October 29, 2015 a certificate of formation for Prosperity was filed with the Texas Secretary of State. Prosperity denies the remaining allegations in Paragraph 38.

39. Defendant denies the allegations in Paragraph 39 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

40. Defendant denies the allegations in Paragraph 40 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

41. Defendant admits that at some point David Houser (“Houser”) accepted employment with Defendant. Defendant denies the remaining allegations in Paragraph 41 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

42. Defendant denies the allegations in Paragraph 42 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

43. Defendant denies the allegations in Paragraph 43 as they relate to Defendant and lacks knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

44. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 44 as they relate to Defendant and lacks knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

45. Defendant denies the allegations in Paragraph 45 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

46. Defendant denies the allegations in Paragraph 46 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

47. Defendant denies the allegations in Paragraph 47 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

48. Defendant denies the allegations in Paragraph 48 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

49. Defendant denies the allegations in Paragraph 49 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

50. Defendant denies the allegations in Paragraph 50 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit..

51. Defendant denies the allegations in Paragraph 51 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

52. Defendant denies the allegations in Paragraph 52 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

53. Defendant denies the allegations in Paragraph 53 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

54. Defendant denies the allegations in Paragraph 54 as they relate to Defendant and lacks knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

55. Defendant denies the allegations in Paragraph 55 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

56. Defendant denies the allegations in Paragraph 56 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

57. Defendant denies the allegations in Paragraph 57 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

58. Defendant admits that it was involved in litigation and arbitration with ECI in 2016 and that such disputes were settled. Defendant denies the remaining allegations in Paragraph 58.

59. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 59.

60. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 60.

61. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 61.

62. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 62.

63. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 63.

64. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 64.

65. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 65.

66. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 66.

67. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 67.

68. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 68.

69. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 69.

70. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 70.

71. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 71.

72. Defendant admits that it reset the license expiration dates for Advantage software on Defendants Olshan's and Plyler's servers. Defendant denies the remaining allegations in Paragraph 72.

73. Defendant denies the allegations in Paragraph 73 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

74. Defendant denies the allegations in Paragraph 74 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

75. Defendant admits that Frazier testifies during a deposition in this case. Defendant denies the remaining allegations in Paragraph 75.

76. Defendant denies the allegations in Paragraph 76 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

77. Defendant denies the allegations in Paragraph 77 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

78. Defendant denies the allegations in Paragraph 78 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

79. Defendant denies the allegations in Paragraph 79 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

80. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 80.

81. Defendant denies the allegations in Paragraph 81 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

82. Defendant denies the allegations in Paragraph 82 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

83. Defendant denies the allegations in Paragraph 83 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

84. Defendant denies the allegations in Paragraph 84 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

85. Defendant admits that there was an agreed temporary restraining order entered in this case.

86. Defendant admits that Plyler and Olshan filed certifications with the Court.

87. Defendant admits that the Court extended the temporary restraining order.

88. Defendant admits that the Court entered an agreed preliminary injunction.

89. Defendant admits that Plyler and Olshan filed certifications with the Court.

90. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 90.

91. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 91.

92. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 92.

93. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 93.

94. Defendant admits that it had access to Plyler and Olshan's server. Defendant denies the remaining allegations in Paragraph 94.

95. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 95.

96. Defendant denies allegations in Paragraph 96.

97. Defendant admits that it extracted customer data, which is owned by Pike County. Defendant denies the remaining allegations in Paragraph 97.

98. Defendant denies the allegations in Paragraph 98.

99. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 99.

100. In response to Paragraph 100, Defendant adopts the preceding paragraphs as if fully set forth herein.

101. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 101.

102. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 102.

103. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 103.

104. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 104.

105. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 105.

106. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 106.

107. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 107.

108. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 108.

109. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 109.

110. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 110.

111. Defendant denies the allegations in Paragraph 111 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

112. Defendant denies the allegations in Paragraph 112 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

113. Defendant denies the allegations in Paragraph 113 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

114. Defendant denies the allegations in Paragraph 114 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

115. Defendant denies the allegations in Paragraph 115 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

116. Defendant denies the allegations in Paragraph 116 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

117. Defendant denies the allegations in Paragraph 117 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

118. Defendant denies the allegations in Paragraph 118 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

119. Defendant denies the allegations in Paragraph 119 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

120. In response to Paragraph 120, Defendant adopts the preceding paragraphs as if fully set forth herein.

121. Defendant denies the allegations in Paragraph 121 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

122. Defendant denies the allegations in Paragraph 122 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

123. Defendant denies the allegations in Paragraph 123 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

124. In response to Paragraph 124, Defendant adopts the preceding paragraphs as if fully set forth herein.

125. Defendant denies the allegations in Paragraph 125 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations

related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

126. Defendant denies the allegations in Paragraph 126 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

127. Defendant denies the allegations in Paragraph 127 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

128. Defendant denies the allegations in Paragraph 128 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

129. In response to Paragraph 129, Defendant adopts the preceding paragraphs as if fully set forth herein.

130. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 130.

131. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 131.

132. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 132.

133. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 133.

134. Defendant denies the allegations in Paragraph 134 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

135. Defendant denies the allegations in Paragraph 135.

136. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 136.

137. Defendant denies the allegations in Paragraph 137 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

138. Defendant denies the allegations in Paragraph 138 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

139. In response to Paragraph 139, Defendant adopts the preceding paragraphs as if fully set forth herein.

140. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 140.

141. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 141.

142. Defendant admits that it never signed a license agreement with ECI.

143. Defendant denies the allegations in Paragraph 143.

144. Defendant denies the allegations in Paragraph 144.

145. Defendant denies the allegations in Paragraph 145.

146. Defendant denies the allegations in Paragraph 146 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

147. Defendant denies the allegations in Paragraph 147 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

148. Defendant denies the allegations in Paragraph 148 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

149. Defendant denies the allegations in Paragraph 149 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

150. Defendant denies the allegations in Paragraph 150 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

151. Defendant denies the allegations in Paragraph 151 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

152. Defendant denies the allegations in Paragraph 152 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

153. Defendant denies the allegations in Paragraph 153 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

154. Defendant denies the allegations in Paragraph 154 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

155. Defendant denies the allegations in Paragraph 155 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

156. Defendant denies the allegations in Paragraph 156 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

157. Defendant denies the allegations in Paragraph 157 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

158. Defendant denies the allegations in Paragraph 158 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

159. In response to Paragraph 159, Defendant adopts the preceding paragraphs as if fully set forth herein.

160. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 160.

161. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 161.

162. Defendant denies the allegations in Paragraph 162 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

163. Defendant denies the allegations in Paragraph 163 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

164. Defendant denies the allegations in Paragraph 164 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

165. Defendant denies the allegations in Paragraph 165 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

166. Defendant denies the allegations in Paragraph 166 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

167. Defendant denies the allegations in Paragraph 167 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

168. Defendant denies the allegations in Paragraph 168 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

169. Defendant denies the allegations in Paragraph 169 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

170. Defendant denies the allegations in Paragraph 170 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

171. Defendant denies the allegations in Paragraph 171 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

172. In response to Paragraph 172, Defendant adopts the preceding paragraphs as if fully set forth herein.

173. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 173.

174. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 174.

175. Defendant denies the allegations in Paragraph 175 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

176. Defendant denies the allegations in Paragraph 176 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

177. Defendant denies the allegations in Paragraph 177 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

178. Defendant denies the allegations in Paragraph 178 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

179. Defendant denies the allegations in Paragraph 179 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

180. Defendant denies the allegations in Paragraph 180 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

181. Defendant denies the allegations in Paragraph 181 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

182. In response to Paragraph 182, Defendant adopts the preceding paragraphs as if fully set forth herein.

183. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 183.

184. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 184.

185. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 185.

186. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 186.

187. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 187.

188. In response to Paragraph 188, Defendant adopts the preceding paragraphs as if fully set forth herein.

189. Defendant admits that it entered into as settlement agreement with ECI in 2016.

190. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 190.

191. Defendant denies the allegations in Paragraph 191.

192. Defendant denies the allegations in Paragraph 192 and denies that ECI is entitled to requested relief.

193. Defendant denies the allegations in Paragraph 193 and denies that ECI is entitled to requested relief.

194. In response to Paragraph 194, Defendant adopts the preceding paragraphs as if fully set forth herein.

195. Defendant denies the allegations in Paragraph 195 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

196. Defendant denies the allegations in Paragraph 196 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

197. Defendant denies the allegations in Paragraph 197 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit.

198. Defendant denies the allegations in Paragraph 198 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

199. Defendant denies the allegations in Paragraph 199 as they relate to Defendant and lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations related to other defendants in this lawsuit. Defendant denies that Plaintiff is entitled to the requested relief.

200. In response to Paragraph 200, Defendant adopts the preceding paragraphs as if fully set forth herein.

201. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 201.

202. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 202.

203. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 203.

204. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 204.

205. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 205.

206. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 206.

207. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 207.

208. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 208.

209. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 209.

210. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 210.

211. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 211.

212. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 212.

213. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 213.

214. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 214.

215. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 215.

216. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 216.

217. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 217.

218. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 218.

219. In response to Paragraph 219, Defendant adopts the preceding paragraphs as if fully set forth herein.

220. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 220.

221. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 221.

222. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 222.

223. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 223.

224. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 224.

225. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 225.

226. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 226.

227. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 227.

228. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 228.

229. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 229.

230. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 230.

231. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 231.

232. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of allegations in Paragraph 232.

233. In response to Paragraph 233, Defendant adopts the preceding paragraphs as if fully set forth herein.

234. Defendant admits the allegations in Paragraph 234.

235. Defendant admits in paragraph 235 that the Court entered an Agreed Preliminary Injunction.

236. Defendant admits in paragraph 236 that the Court entered an Agreed Preliminary Injunction.

237. Defendant admits in paragraph 237 that the Court entered an Agreed Preliminary Injunction.

238. Defendant admits that the Parties' Agreed Preliminary Injunction in paragraph of Plaintiff's Amended Complaint remains in place according to its terms.

239. Defendant admits that Plaintiff's Complaint in paragraph 239 seeks permanent injunctive relief, but contends Plaintiff is not entitled to the relief requested.

240. Defendant admits that Plaintiff's Amended Complaint in paragraph 240 seeks permanent injunctive relief, but contends Plaintiff is not entitled to the relief requested.

241. In response to the Relief Requested, Defendant contends Plaintiff is not entitled to the relief requested.

GENERAL DENIAL

Pursuant to Rule 8(b)(3) of the Federal Rules of Civil Procedures, Prosperity states that any allegation in the First Amended Complaint that it is not specifically admitted, is denied.

PROSPERITY'S DEFENSES

Prosperity sets forth its defenses, including affirmative defenses, without assuming any burden of production or proof that it would not otherwise have, as follows:

242. Plaintiff has failed to state a claim upon which relief may be granted.

243. Plaintiff's claims are barred by the doctrine of fair use.

244. Plaintiff's claims are barred by the doctrine of laches, waiver, and estoppel.

245. Plaintiff's claims are barred by the doctrine of release.

246. Plaintiff's claims are barred by statute of limitations.

247. Plaintiff's claims are barred by the doctrine of unclean hands.

248. To the extent Plaintiff suffered any damages, which Prosperity expressly denies, Plaintiff has failed to take the steps necessary to mitigate the damages sustained.

249. To the extent Plaintiff suffered any damages, which Prosperity expressly denies, then said damages resulted from Plaintiff's own acts and/or omissions.

250. Plaintiff's claims are barred, in whole or in part, because Prosperity's conduct was in good faith and with non-willful intent, at all times.

251. To the extent that Plaintiff may seek punitive damages, Plaintiff's recovery is limited by applicable provisions of the statutes at issue and the Texas and/or United States Constitutions and the award of punitive damages to Plaintiff in this case would be in violation thereof and the constitutional safeguards provided to Prosperity under the Constitution of the United States and/or the laws of the State of Texas.

252. Plaintiff is not entitled to permanent injunctive relief, because Plaintiff is not likely to succeed on the merits of its claims, Plaintiff would have an adequate remedy at law, the balance of hardships favors no injunction, and the public interest is best served by no permanent injunction.

253. Plaintiff's claims are barred because they cannot show circumvention or copying.

254. Even if Plaintiff proves Defendant violated Plaintiff's alleged copyrights, Defendant did not do so willfully. Defendant was not aware and had no reason to believe that its acts constituted an infringement of copyright.

255. Plaintiff's claims are barred in whole or in part because there has been no unfair competition on the part of Defendant.

256. Plaintiff's claims are barred in whole or in part by Plaintiff's consent to or acquiescence in Defendant's use of Plaintiff's software.

257. Plaintiff may not recover attorneys' fees and costs as it has failed to plead facts sufficient to support recovery of such damages.

258. Plaintiff may not recover exemplary damages because (i) Prosperity acted reasonably and in good faith and did not commit any willful violation of any of the provisions of either the DTSA or the TUTSA; (ii) Prosperity did not authorize or ratify any willful violation with respect to the co-defendants, and (iii) Plaintiff has failed to plead facts sufficient to support recovery of such damages.


259. Plaintiff's claim for attorney's fees— and statutory damages, if any—under the Copyright Act is barred to the extent the copyrights in issue do not meet the registration requirements of the Copyright Act, including 17 U.S.C. § 412.

260. To the extent Plaintiff sustained any damages, if any, Defendant asserts that Plaintiff's own acts or omission caused its damages.

261. Prosperity presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative or other defenses available. Prosperity reserves herein the right to assert additional defenses in the event that discovery indicates they would be appropriate.

WHEREFORE, PREMISES CONSIDERED, Prosperity prays that Plaintiff take nothing by way of its claims, judgment be entered in favor of Prosperity, and Prosperity has such other and further relief, at law or in equity, to which it may have shown itself to be justly entitled.

Respectfully submitted,

By: 

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**ATTORNEYS FOR DEFENDANT
PROSPERITY COMPUTER
SOLUTIONS, LLC**

CERTIFICATE OF SERVICE

I certify that the foregoing document was served on all parties via CM/ECF on February 25, 2019:

/s/ Elisaveta Dolghih

Elisaveta Dolghih